Compucom Systems, Inc. *and* Communication Workers of America, Local 1032. Case 22–CA–28969

November 12, 2010

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS PEARCE AND HAYES

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on June 19, 2009, the General Counsel issued the complaint on July 24, 2009, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following the Union's certification in Case 22–RC–12925. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On August 12, 2009, the General Counsel filed a Motion for Summary Judgment. On August 14, 2009, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

On September 30, 2009, the two sitting members of the Board issued a Decision and Order in this proceeding, which is reported at 354 NLRB No. 87.[1] Thereafter, the Respondent[2] filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit, and the General Counsel filed a cross-application for enforcement.

On June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained. Thereafter, the Board issued an Order setting aside the above-mentioned decision and order, and retained this case on its docket for further action as appropriate.

On August 23, 2010, the Board issued a further Decision, Certification of Representative, and Notice to Show Cause in Cases 22–CA–28969 and 22–RC–12925, which is reported at 355 NLRB No. 112. Thereafter, the Acting General Counsel filed an amended complaint in Case 22–CA–28969, the Respondent filed an amended answer, the Acting General Counsel filed a supplemental memorandum in support of his Motion for Summary Judgment, and the Respondent filed a response to the Notice to Show Cause.

The National Labor Relations Board has consolidated these proceedings and delegated its authority in both proceedings to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain in its answer and response to the Board's Notice to Show Cause, but contests the validity of the Union's certification on the basis of the Board's resolution of the five challenged ballots in the representation proceeding.[3]

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.[4]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with offices and places of business in East Hanover, New Jersey, Florham Park, New Jersey, and Suffern, New

[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the powers of the National Labor Relations Board in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Thereafter, pursuant to this delegation, the two sitting members issued decisions and orders in unfair labor practice and representation cases.

[2] The underlying representation decision was captioned under the name of the predecessor employer, Getronics USA, Inc. About August 20, 2008, the Respondent purchased the business of, and became the successor to, Getronics USA, Inc.

[3] In its amended answer, the Respondent denies that the Union won the election in Case 22–RC–12925, arguing that challenged voters Robert Mikol and John Paynter are not "supervisors" as defined by Sec. 2(11) of the Act, and that all five determinative challenged ballots should have been opened and counted. Further, the Respondent submits that a majority of the alleged bargaining unit employees "do not" wish to have the Union serve as their exclusive collective-bargaining representative.

[4] Thus, we deny the Respondent's request that the complaint be dismissed in its entirety.

York, has been engaged in the business of contract computer support services.[5]

About August 20, 2008, the Respondent purchased the business of Getronics USA, Inc. (Getronics). Since then, it has continued to operate the business of Getronics in basically unchanged form and has employed as a majority of its employees, individuals who were previously employees of Getronics.

Based on the operations described above, the Respondent has continued the employing entity and is a successor to Getronics.

During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operations described above, purchased and received at its New Jersey facilities goods valued in excess of $50,000 directly from points outside of the State of New Jersey.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union, Communication Workers of America, Local 1032, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the representation election held on June 27, 2008, in Case 22–RC–12925, the Union was certified on August 23, 2010, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time Technical Support Specialists, Network Engineers, Logistics Coordinators and Help Desk Analyst employees, employed by the Respondent at its Florham Park, New Jersey, East Hanover, New Jersey, and Suffern, New York facilities, but excluding all office clerical employees, Business Analyst, Project IC Managers, guards, and supervisors as defined in the Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees based on Section 9(a) of the Act.

B. Refusal to Bargain

By letters to the Respondent dated May 19 and June 9, 2009, the Union requested that the Respondent bargain collectively with it as the exclusive collective-bargaining representative of the unit and provide information for that purpose. By letter dated June 15, 2009, the Respondent refused to bargain with the Union.[6] On September 3, 2010, the Union again requested that the Respondent commence negotiations for a collective-bargaining agreement. By letter dated September 21, 2010, the Respondent rejected the Union's request, maintaining that it would be contesting the certification, and further asserting that it believed the Union did not represent an uncoerced majority of unit employees at the Novartis site (the employees).

The Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit.[7] We find that the failure to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit violates Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.[8]

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to recognize and bargain on request with the Un-

[5] In its amended answer to the amended complaint, the Respondent admits that it is a Delaware corporation which maintains its corporate offices in Dallas, Texas. The Respondent also admits that it provides information technology (IT) related services to business customers throughout the United States, including the installation, maintenance, and support of customers' IT infrastructure, and that it conducts business in East Hanover and Florham Park, New Jersey, and Suffern, New York.

[6] Although the complaint does not refer to the Union's May 19 and June 9, 2009 letters to the Respondent requesting bargaining, or to the Respondent's June 15, 2009 letter refusing to bargain, they are attached to the General Counsel's memorandum in support of the motion for summary judgment as Exhs. H, I, and J, respectively.

[7] The amended complaint alleges, and the Respondent's amended answer admits, that the Respondent has refused to bargain with the Union since June 15, 2009.

[8] In *Howard Plating Industries*, 230 NLRB 178, 179 (1977), the Board stated:

> Although an employer's obligation to bargain is established as of the date of an election in which a majority of unit employees vote for union representation, the Board has never held that a simple refusal to initiate collective-bargaining negotiations pending final Board resolution of timely filed objections to the election is a *per se* violation of Section 8(a)(5) and (1). There must be additional evidence, drawn from the employer's whole course of conduct, which proves that the refusal was made as part of a bad-faith effort by the employer to avoid its bargaining obligation.

No party has raised this issue, and we find it unnecessary to decide in this case whether the unfair labor practice began on the date of the Respondent's initial refusal to bargain at the request of the Union, or at some point later in time. It is undisputed that the Respondent has continued to refuse to bargain since the Union's certification and we find that continuing refusal to be unlawful. Regardless of the exact date on which Respondent's admitted refusal to bargain became unlawful, the remedy is the same.

ion and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co*., 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); and *Burnett Construction Co*., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, CompuCom Systems, Inc., East Hanover and Florham Park, New Jersey, and Suffern, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Communication Workers of America, Local 1032, as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time Technical Support Specialists, Network Engineers, Logistics Coordinators and Help Desk Analyst employees, employed by the Respondent at its Florham Park, New Jersey, East Hanover, New Jersey, and Suffern, New York facilities, but excluding all office clerical employees, Business Analyst, Project IC Managers, guards, and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facilities in East Hanover and Florham Park, New Jersey, and Suffern, New York, copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.[10] Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 15, 2009.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 12, 2010

Wilma B. Liebman,	Chairman
Mark Gaston Pearce,	Member
Brian E. Hayes,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[10] For the reasons stated in his dissenting opinion in *J. Picini Flooring*, 356 NLRB No. 9 (2010), Member Hayes would not require electronic distribution of the notice.

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Communication Workers of America, Local 1032, as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All full-time and regular part-time Technical Support Specialists, Network Engineers, Logistics Coordinators and Help Desk Analyst employees, employed by us at our Florham Park, New Jersey, East Hanover, New Jersey, and Suffern, New York facilities, but excluding all office clerical employees, Business Analyst, Project IC Managers, guards, and supervisors as defined in the Act.

COMPUCOM SYSTEMS, INC.